tion is the same as giving no information at all. An offence is therefore committed under the section.

Utam Singh on the other hand said that when he saw the Chief Clerk he said that he did not know who had been driving his car on the dates mentioned but that he himself might have been.

Accepting this without qualification can he be said to have satisfied the requirements of the section? In my opinion clearly not. To say simply that he did not know is no defence because he must also show that he had used reasonable diligence to ascertain the information. To say as he did was to give no information at all.

For these reasons I convicted Utam Singh and fined him $5 on each charge.

The order on this appeal will then be that the appeal is allowed and the convictions and sentences are set aside. The fines paid must be refunded. There will, however, be a conviction recorded against him under two charges under section 33 (i) (b) of the Road Traffic Enactment to which he is fined $5 on each charge.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
October, 10, 1938

KUNDAN SINGH & 7 ORS.....Appellants
vs.
PUBLIC PROSECUTOR.....Respondent

[PERAK MAGISTRATE'S CRIMINAL APPEALS Nos. 53-60 of 1938]

Criminal law—charge of rioting—conviction for causing hurt—whether conviction sustainable —Penal Code (Cap. 45), ss. 147, 323; Criminal Procedure Code (Cap. 6), S. 169.

The appellants were charged with rioting under Section 147 of the Penal Code but were convicted for causing hurt under Section 323 of the Penal Code.

Held, that the conviction must be set aside, and that although causing hurt might be an element in a case of riot, it is not a "minor offence" within section 169 of the Criminal Procedure Code.

The term "minor offence" in Section 169 means merely an offence with a smaller punishment attached than the offence with which an accused person was originally charged.

Sub-section (i) of Section 169 covers the case where some of the facts only of those constituting the original offence are proved and subsection (ii) of that section where additional facts are proved pointing to the commission of the minor offence.

MAGISTRATE'S CRIMINAL APPEAL.

Diamond for the Appellants.

Brodie, Deputy Public Prosecutor for the Respondent.

Cur. Ad. Vult.

MURRAY-AYNSLEY, J.—In this case the Appellants were charged as follows:—

> "That you on 10.4.38 at about 7.30 p.m. at the Sikh Settlement 3rd mile, Gopeng Road, Ipoh were a member of an unlawful assembly, and, in prosecution of the common object of such assembly—viz, the committing of criminal intimidation, committed the offence of rioting which is an offence punishable under Section 147 Cap. 45."

The Magistrate convicted them under Section 323 of Cap. 45 for causing hurt. This could only be done by his powers under Section 169 of the Criminal Procedure Code. At first sight some difficulty appears to arise from the use of the words "minor offence," the use of the word "minor" would according to its natural meaning indicate a division into categories not a mere relation between two offences *inter se* but subsection (iii) shows that other offences under the Penal Code may be minor offences within the meaning of this section, and therefore the term means merely an offence with a smaller punishment attached than the offence with which an accused person was originally charged. In interpreting the section consideration must be given to the effect of sub-section (i) and (ii). Subsection (i) covers the case where some of the facts only of those constituting the original offence are proved, sub-section (ii) where additional facts are proved. The present case is one which comes within sub-section (i) if it comes within Section 169 at all. To come within sub-section (i) the offence of which the accused is convicted must be one, which is, as it were, necessarily included in the offence originally charged, which is not the case here, although causing hurt might have been element in a case of riot. In this connection it is useful to refer to the original charge.

I have in deciding the case followed the not very authoritative Indian decisions on the corresponding Indian Section. The convictions must therefore be quashed.

I may add that I fail to see how if the Magistrate, as is apparently the case, found that there was not sufficient common purpose for the purpose of establishing a case of riot he could convict all the appellants of the offence of causing hurt.

[APPELLATE CIVIL JURISDICTION]
MURRAY-AYNSLEY, J.

SANTA SINGH son of MEYA SINGH.....Appellant
vs.
SANTA SINGH son of LEHNA SINGH.....Respondent

[PERAK MAGISTRATE'S CIVIL APPEAL No. 26 of 1938]

Bills of Sale—assurance of cattle—whether include offspring born during subsistence of bill —description of chattels—sufficiency of—Bills of Sale Enactment (Cap. 57) s. 5 (i).

By a bill of sale the grantor assigned among other buffaloes "one Indian she buffalo calf colour black one

month old". An attempt was made to attach one of the buffaloes and the offspring of the others, to which the grantee of the bill of sale objected.

Held, that the description of the buffalo in the bill of sale satisfied Section 5(i) of the Bills of Sale Enactment (Cap. 57).

Held further, that the assurance of the animals gave to the grantee the property in their offspring born after the date of the bill.

MAGISTRATE'S CIVIL APPEAL.

Farr for the Appellant.

Thivy for the Respondent.

Cur. Ad. Vult.

MURRAY-AYNSLEY, J.—The case arises out of a bill of sale transaction. One Santa Singh the Appellant on December 5th 1934 sold certain buffaloes to one Buda. On the following day Buda gave a bill of sale over the same buffaloes to the Appellant. Now another Santa Singh, the Respondent, has attempted to attach one of the buffaloes and the offspring of others to which the Appellant objects. There seem to be two points in the case, first was the surviving buffalo adequately described in the bill of sale? Secondly what is the position of the offspring of animals subject to a bill of sale.

As regards the first point Section 5(i) of Cap. 57 requires:—

> "Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale, and such bill of sale, save as hereinafter mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule and shall be void in respect of any personal chattels not so specifically described".

This wording is based on that of the 1882 Act in England which Act was intended to protect borrowers. Here there is one act which is intended to serve the purpose of the 1882 Act and of the 1878 Act which was intended to protect creditors. This double purpose of the combined Enactment increases the difficulties of construction which were already considerable in the English Acts.

The words of description used in this case are "One Indian she buffalo calf colour black one month old." It is argued that a more accurate description could have been given, in particular the colour of the tip of the tail could have been given and according to the evidence usually is given in these cases.

But the English authorities do not support the view that any very meticulous description is required. The world "specific" is normally opposed to the word "general" and I think that the aim of the provision is to make it necessary to enumerate all the chattels intended to be passed and prevent the use of general words which on the one hand might cause the class of people who normally give bills of sale to be ignorant of what they were assigning and on the other hand might render identification difficult. Here there is a description which is specific and I think that it satisfies the terms of the section. The cases where a description has been held to be insufficient have been cases where a whole class has been described in general terms. Even in those cases it has been held that it is not necessary to describe each individual member of a class separately.

The only test is what is a reasonable description in the circumstances and I think that on this point the Appellant is entitled to succeed.

The other point I found one of some difficulty. On the one hand as the claim of the Appellant to the offspring is traced back to the bill of sale it might be considered that the terms of Section 5 (i) would have the effect of barring the claim of the Appellant. Apart from the provisions of section 5 the assurance of the animals in the bill of sale would give to the Appellant the property in the offspring born after that date. If the section applied only to mortgage bills of sale it might be reasonable to limit the rights of the grantee to the animals actually described but as the section applies equally to absolute bills of sale and in that case, I consider such a construction inapplicable.

I think that the effect is that where an assurance of a chattel is required it must satisfy the requirements of the section or the bill of sale is void as regards such chattel. This covers the ordinary case of after acquired chattels. But in this case no assurance is required to give the property to the grantee. The question of redemption gives rise to other problems which do not arise in this case. I think that on this part also the Appellant is entitled to succeed.

It is clear that a bill of sale when registered is good against execution creditors.

The appeal must therefore be allowed with costs.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

RAJA MUSA, Ag. J.

August 18, 1938

SUCHAIT SINGH son of KARAM SINGH .....Plaintiff

vs.

SHER ALI KHAN son of KESAR KHAN by his Administratrix RAHIMAH BINTI HAJI BISHARAT.....Defendant

[NEGRI SEMBILAN CIVIL SUIT No. 35 of 1937]

Land Code, S. 148—charge—absence of provision for post diem interest—claim for damage for breach of contract—conditions under which claim maintainable—interest—default in payment for more than 3 years—limitation—Limitation Enactment, S. 19, Articles 47, 95.